

1 KAMALA D. HARRIS  
2 Attorney General of California  
3 MARISA Y. KIRSCHENBAUER  
Supervising Deputy Attorney General  
3 State Bar No. 226729  
4 455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
Telephone: (415) 703-1380  
5 Fax: (415) 703-5843  
E-mail: Marisa.Kirschenbauer@doj.ca.gov  
6 *Attorneys for R. Swift, T. Puget, C. Ducart, R. Tupy,  
D. Barneburg, A. Murphy and N. Bramucci*  
7

8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

12 DONNIE PHILLIPS,

13 Plaintiff,

14 v.  
15 BRAMUCCI, et al.,  
16 Defendants.

17 C 15-01533 EJD (PR)  
18 STIPULATION AND [PROPOSED]  
ORDER FOR VOLUNTARY DISMISSAL  
WITH PREJUDICE AS TO DEFENDANT  
A. BARNEBURG AND ADDITION OF  
DEFENDANT D. BARNEBURG AS A  
PARTY TO THIS LAWSUIT

Judge: Honorable Edward J. Davila

Action Filed: April 3, 2015

19 On July 29, 2015, Plaintiff Donnie Phillips served Defendant Barneburg, without reference  
20 to a first name or initial. The California Department of Corrections and Rehabilitation (CDCR)  
21 therefore accepted service on behalf of A. Barneburg. On October 13, 2015, defense counsel  
22 spoke with A. Barneburg concerning this action, and A. Barneburg informed counsel that the  
23 proper defendant in this case should be D. Barneburg, who was also employed by CDCR as a  
24 Correctional Lieutenant at the relevant time and place at issue in this lawsuit. CDCR was also  
25 able to confirm this information with D. Barneburg.

26 On October 27, 2015, Plaintiff Phillips and counsel for Defendants R. Swift, T. Puget, C.  
27 Ducart, R. Tupy, D. Barneburg, A. Murphy and N. Bramucci discussed and resolved this matter.  
28

Accordingly, in the interests of judicial economy and to conserve the parties' and the Court's resources, the parties stipulate as follows:

1. Defendants accept Phillips's original service of his summons and complaint on behalf of Defendant D. Barneburg.

2. Defendants' Answer, filed on September 21, 2015, is effective as to Defendant D. Barneburg.

3. The parties having resolved this case in its entirety regarding Defendant A. Barneburg, stipulate to a dismissal of this action as to A. Barneburg with prejudice, under Federal Rule of Civil Procedure 41(a)(1)(A)(ii).

10 Each party shall bear its own litigation costs and attorney's fees.

## **IT IS SO STIPULATED.**

13 Dated: 10-27-2015

Donna Phillips  
Donna Phillips

Donnie Phillips  
Plaintiff in *pro per*

16 Dated: 10-27-2015

/s/ *Marisa Y. Kirschenbauer*

Marisa Y. Kirschenbauer  
Supervising Deputy Attorney General  
California Attorney General's Office  
*Attorney for Defendants R. Swift, T. Puget, C. Ducart, R. Tupy, D. Barneburg, A. Murphy and N. Bramucci*

III

III

III

1                   **[PROPOSED] ORDER**  
2  
3  
4  
5

In accordance with the parties' stipulation, Plaintiff Phillips's action against Defendant A. Barneburg is dismissed with prejudice. Further, Defendant D. Barneburg is considered to have been properly served, and Defendants' Answer shall apply on his behalf.

6                   **IT IS SO ORDERED.**  
7  
8

Dated:

11/3/15

  
HON. EDWARD J. DAVILA  
United States District Judge

9  
10  
11 SF2015200479  
12 41405686.doc  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28